

Eligible Training Provider Policy

Reference:

Workforce Investment Act of 1998, Sections 117, 122, 123, 134; 20 CFR: 663.500-663.595, 667.640; Nebraska's WIA Five-Year Integrated State Plan (July 1, 2012 – June 30, 2017) and approved Waiver of Period of Initial Eligibility for Training Providers.

Background:

To prescribe eligibility criteria and general conditions that training providers must meet in order to become certified as an eligible provider to receive adult and dislocated worker funds through Individual Training Accounts. Initial eligibility is required to be for a maximum of 18 months [WIA Section 122(c)(5)] and, in limited circumstances when insufficient data is available, may be extended for a period of up to six additional months. However, since 2005, the State has received approval from the U.S. Department of Labor to waive the initial eligibility period for training providers. Nebraska's current waiver is approved through June 30, 2017. The State requested the waiver in order to enhance the flexibility of the public workforce system and bring a larger number of training provider choices delivered through the State's Eligible Training Provider (ETP) List located at <http://traininglink.dol.state.ne.us/>. The list includes public and private colleges and universities, state colleges, community colleges, private postsecondary career colleges and schools, community based organizations, approved apprenticeship programs, or the job training employers and youth service providers.

Action:

After the 10 day public review period, this policy is considered final. Questions and comments should be submitted in writing to Jan Fox, Policy Coordinator, jan.fox@nebraska.gov.

Policy:

To become an eligible provider requires that a training provider be certified under the Higher Education Act and provide a program that leads to an associate degree, baccalaureate degree or certificate; or provide training under the National Apprenticeship Act; or provide a program of training services as an alternative public or private provider.

All providers must apply for certification and submit the performance and cost information required. To remain eligible, providers must meet or exceed minimum levels of performance established by the State and localities.

Providers certified as eligible providers in one Workforce Investment Area are eligible providers for all areas. The State will compile a list of eligible providers with cost and performance information. This information is provided so the customer is able to make an informed decision on which provider and program of training services best meets his/her needs. The list will be available electronically on the Nebraska Department of Labor (NDOL) website at www.dol.nebraska.gov.

There are procedures for removing institutions from the eligible provider list if the certification criteria are not met and there are appeal procedures for institutions that have been removed.

Eligibility Requirements

The Workforce Investment Act emphasizes informed customer choice, system performance and continuous improvement. The eligible provider process is part of the strategy to achieve these goals. The State has the responsibility of managing the eligible training process to ensure its success. Although the State establishes the minimum performance levels for initial determination of non-Higher Education Act/registered apprenticeship providers and all subsequent eligibility determinations, the local boards may establish additional performance levels for subsequent eligibility determinations.

Many types of training services are eligible to be certified as eligible providers. A program of training services is one or more courses or classes, or a structured regimen that, upon successful completion, leads to:

- A certificate, an associate degree, or baccalaureate degree; or
- The skills or competencies needed for a specific job or jobs, an occupation, occupational group, or generally, for many types of jobs or occupations, as recognized by employers and determined prior to training.

There are two types of eligibility, A) **initial** and B) **subsequent**, which have slightly different qualifying procedures and will be discussed separately.

A. INITIAL ELIGIBILITY REQUIREMENTS

Nebraska has established the following policies and procedures for determining the *initial* eligibility for training providers based on Section 122 of the Act:

Step 1 – Submit Application on TrainingLink

All institutions, public or private providers desiring to provide training services shall submit an application on TrainingLink <http://traininglink.dol.state.ne.us/>. The application was developed jointly by all three local boards and contains the required information from the Act and regulations. To assure the training provider complies fully with nondiscrimination, equal opportunity and accessibility requirements, the application contains questions addressing these issues. Only those providers answering affirmatively shall be given further consideration as possible applicants. The application can be accessed on the TrainingLink website. The provider must submit an application in the time frame and manner prescribed by the local board ensuring that all necessary information is included.

If the provider is a private postsecondary career school, the state checks the Nebraska Department of Education's Private Postsecondary Career Schools office to ensure the provider is able to do business in Nebraska under state law or is exempt. This occurs prior to activating the TrainingLink account. Once the TrainingLink account is activated, the provider is able to enter a program application for submission to the local board. The provider must submit an application in the time frame and manner prescribed by the local board ensuring that all necessary information is included.

Applications received in TrainingLink are forwarded to the appropriate local board for review. Upon review, the local board will approve or disapprove the initial application. The local area will then forward the application with approval or disapproval date back to the State so the status in TrainingLink can be changed. Approved programs are then forwarded to NDOL's Office of Employment and Training (OET) for inclusion in NEworks, the statewide MIS case management system. Approved programs will be available to participants across the state. If a program application is not approved, the local area will contact the provider to inform them of the local board's decision.

There are circumstances when applications require state review and when state review is not required.

When State Review Is Required – Other Public or Private Providers – Other public or private providers of a program of training may be included on the initial eligible provider list even though they do not meet the criteria described above. However, they must follow the procedure established by local boards to determine the eligibility of a provider to receive funds for a program of training services. Examples of providers that might be included in this category include community-based organizations and the local boards, if those local boards meet the waiver criteria for providing training (discussed later in this policy). Programs of training services provided by postsecondary educational institutions that do not lead to an associate or baccalaureate degree or certificate and apprenticeship programs that are not registered under the National Apprenticeship Act must be determined for initial eligibility under these provisions. Customers may nominate to the local board providers to be considered on the initial eligible provider list.

When State Review Is Not Required – According to Section 122 of WIA, a training provider that meets one of the following criteria is initially eligible without state agency review:

- a post secondary educational institution that is able to receive Federal funds under title IV of the Higher Education Act of 1965 and provides a program that leads to an associate degree, a baccalaureate degree, or certificate;

OR

- an entity that carries out programs under the National Apprenticeship Act.

WIA Section 122(c)(5) requires the initial eligibility to be for a maximum of 18 months. In limited circumstances when insufficient data is available, initial eligibility may be extended for a period of up to six additional months. However, since 2005, the State has received approval from the U.S. Department of Labor to waive the initial eligibility period for training providers. Nebraska's current waiver is approved for July 1, 2012 through June 30, 2017.

Step 2– Performance Information *[Required for Other Public or Private Providers]*

Current Provider of Training Services – If the provider provides training services through a program on the date of application, they shall include performance information on the program.

There are seven measures for which providers must submit performance data and meet the standards.

Three of the measures cover all individuals participating in the program and include:

1. Program completion rates for all individuals participating in the applicable program; [For programs longer than one year in length, participants may be identified by their major. If a student (who earlier declared a major) transfers out of the program, he/she is no longer identified with that program.]
2. Percentage of all individuals participating in the applicable programs who obtain unsubsidized employment, which may also include information specifying the percentage of individuals who obtain unsubsidized employment in an occupation related to the program; and
3. Wages at placement in employment of all individuals participating in the applicable program.

Four of the measures concern only customers who complete the training program and cover the:

4. Percentage of applicants who have completed the applicable program and have been placed in unsubsidized employment;
5. Retention rates in unsubsidized employment of participants who have completed the applicable program, six months after the first day of the employment involved;
6. Wages received by participants who have completed the applicable program, six months after the first day of the employment involved; and
7. Rates of licensure or certification, attainment of academic degrees or equivalents, or attainment of other measures of skills, of the training participants who graduate from applicable programs.

Non-Current Provider of Training Services – If the provider does not provide training services on the date of the application, the provider must meet the appropriate requirements as specified in the state and local procedures.

WIA Section 122(c)(5) requires the initial eligibility for approved Other Public or Private Providers to be for a maximum of 18 months. In limited circumstances when insufficient data is available, initial eligibility may be extended for a period of up to six additional months. However, since 2005, the State has received approval from the U.S. Department of Labor to waive the initial eligibility period for training providers. Nebraska's current waiver is approved through June 30, 2017.

Step 3 – Cost Information *[Required for All Providers]*

Each provider must submit information relating to the program costs (such as tuition and fees) for participants of each program.

Step 4 – Verification of Performance

After the State receives the local lists of eligible providers and programs, the designated state agency has 30 days to verify whether the provider meets the required performance. A provider who is placed on the list for a program, and is not removed by NDOL, shall be considered an eligible provider of training services for the program. The program is displayed on Training Link <http://traininglink.dol.state.ne.us/> with a red check mark to indicate that it is an approved program.

B. SUBSEQUENT ELIGIBILITY REQUIREMENTS

Nebraska has established the following policies and procedures for determining the *subsequent* eligibility for training providers based on Section 122 of the Act:

Step 1 [Required for All Providers]

Training providers seeking subsequent eligibility shall submit the following performance information annually through their application in TrainingLink. They must also annually meet the required performance levels.

There are seven measures for which providers must submit performance data.

Three of the measures cover all individuals participating in the program and include:

1. Program completion rates for all individuals participating in the applicable program; [For programs longer than one year in length, participants may be identified by their major. If a student (who earlier declared a major) transfers out of the program, they are no longer identified with that program.]
2. Percentage of all individuals participating in the applicable programs who obtain unsubsidized employment, which may also include information specifying the percentage of individuals who obtain unsubsidized employment in an occupation related to the program; and
3. Wages at placement in employment of all individuals participating in the applicable program.

Four of the measures concern only WIA customers who complete the training program and cover the:

1. Percentage of participants who have completed the applicable program and have been placed in unsubsidized employment;
2. Retention rates in unsubsidized employment of participants who have completed the applicable program, six months after the first day of the employment involved;
3. Wages received by participants who have completed the applicable program, six months after the first day of the employment involved; and
4. Rates of licensure or certification, attainment of academic degrees or equivalents, or attainment of other measures of skills, of the training participants receiving funds authorized under Title I of WIA who graduate from applicable programs.

Additional Information – The Governor and state board may annually require other verifiable program-specific performance information such as: retention rates in employment and the subsequent wages of all individuals who complete the applicable program; or where appropriate, the rates of licensure or certification of all individuals who complete the program; and the percentage of individuals who complete the program who attain industry-recognized occupational skills in the subject, occupation, or industry for which training is provided through the program, where applicable. The Governor or local board, may require other verifiable program-specific performance information to obtain subsequent eligibility.

Assistance With Information Collection – If gathering the additional information imposes extraordinary costs or if gathering the required information on training participants receiving funds authorized by Title I of WIA imposes extraordinary costs, the Governor or state board shall provide access to cost-effective methods for the collection of the required information, or the Governor shall provide additional resources to assist providers in the collection of the information, as appropriate. For instance, use of wage records with the assistance of the Department of Labor may assist in this process.

Step 4 – Cost Information *[Required for All Providers]*

Each provider must submit information relating to the program costs (such as tuition and fees) for participants of each program.

Step 3 – Performance Verification *[Required for All Providers]*

A provider who is retained on the list for a program, and is not removed by the State shall be considered to be an eligible provider of training services for the program.

Development of Procedures

Initial

As the initial procedures to determine eligibility as a provider were developed, recommendations were sought from the local boards, local board staff and providers of training services. Comments were also solicited from interested members of the public, including representatives of business and labor organizations.

Subsequent

The Governor shall determine the specific procedure, for use by the local boards, for determining subsequent eligibility for post secondary educational institutions that are able to receive Federal funds under Title IV of the Higher Education Act of 1965 and provide programs that lead to an associate degree, a baccalaureate degree, or certificate, or an entity that carries out programs under the National Apprenticeship Act.

During the development of the procedures to determine subsequent eligibility as a provider, the Act spells out the need to receive recommendations from the local boards and providers of training services. Comments shall also be solicited from interested members of the public, including representatives of business and labor organizations.

The State requires local boards to consider several factors in making determinations of subsequent eligibility. These include: specific economic, geographic, and demographic factors (including the characteristics of the populations) in the local areas in which providers seeking eligibility are located. The local boards should also consider the difficulties in serving specific population groups.

The local board may require higher levels of performance than the levels referred to in the State procedures.

The Governor will make available the services of NDOL for the use of wage records in gathering information related to the eligible training provider provision under WIA, where appropriate as determined by the Commissioner of Labor, and not prohibited by state or federal law. Although the Governor will make available the services of NDOL to assist local boards in accessing this information, local boards may obtain this information from any reliable source.

Waiver Authority

In general, except under waiver authority, no local board (or their staff) may provide training services. However, local boards may submit a proposed request for a waiver of training prohibition to the Governor to become an eligible provider of training services. The local board's request must include:

- satisfactory evidence there is an insufficient number of eligible providers of such training services to meet the demand in the local area;
- information demonstrating the board meets the requirements as an eligible provider of training services; and
- information demonstrating the program of training services prepares participants for an occupation that is in demand in the local area.

The local board must also make the proposed request available to eligible providers of training services and other interested members of the public for a public comment period of not less than 30 days. The local board must then submit the request to NDOL, with the information and evidence listed above as well as information from the public comments received. Local boards may apply for a waiver that does not exceed one year in length. A waiver may be renewed for additional periods not to exceed one year if the local board again follows the procedures listed above.

The waiver may be revoked if the State determines the local board involved has engaged in a pattern of inappropriate referrals to training services operated by the local board.

On-the-Job Training Providers

Providers of customized training and on-the-job training shall not be subject to the eligible provider requirements. [WIA Section 122(h)(1)] The State has established qualifying procedures to ensure a strong relationship between the eligible provider process and program performance. In general, performance information must be collected and the local area shall determine whether providers meet the performance criteria as the State procedures require. Employers participating in the OJT Program will be listed on the State's Eligible Training Provider list on TrainingLink. NEworks will be the source for employer information.

Eligible Providers of Youth Activities

The local board for each area shall identify eligible providers of youth activities by awarding grants or contracts on a competitive basis, based on the recommendations of the youth council and on the criteria contained in the State Plan. [Refer to the State WIA "Procurement Standards" policy.] Providers of youth activities will not be listed on the State's eligible training provider list (unless they *also* provide services to adults and dislocated workers).

Eligible Providers of Technology Based Learning (TBL)

NDOL encourages the local areas to utilize Technology Based Learning (TBL) opportunities as much as possible. The utilization of TBL coursework offers accessibility to training opportunities to both rural and urban residents as well as flexibility on achieving necessary coursework.

Administration

The Governor has designated NDOL as the agency responsible for carrying out the responsibilities associated with the selection of service providers for Individual Training Accounts. These responsibilities include making determinations on whether a provider has met its performance levels and carrying out enforcement measures. NDOL was chosen as an unbiased broker of information and services. NDOL is responsible for the employment statistics used to help eligible providers gather performance information.

Availability of the Eligible Provider Information

NDOL shall compile a single list of eligible training providers from applications approved by a local workforce investment board. NDOL will disseminate the list, which includes performance information and program cost information, and will post the list on the NDOL website at <http://www.dol.nebraska.gov/> > Quick Links > TrainingLink. The information shall be made widely available to participants in employment and training activities authorized under the WIA and others, through the TrainingLink website.

The public list of eligible providers will contain the following information, at a minimum:

- program and provider name and address
- program completion rates for all individuals participating in the applicable programs
- percentage of all individuals participating in the applicable programs who obtain unsubsidized employment
- wages at placement
- program costs

NDOL is well positioned to provide access to the list of eligible providers and accompanying performance data. The NDOL website at <http://www.dol.nebraska.gov/> is well-known for career information.

Individual customers eligible to receive training services under Section 134(d)(4) of the WIA shall have the opportunity to select any of the “eligible providers” that have been approved by a local workforce investment board and appear with a red check mark on TrainingLink.

Nebraska may enter into reciprocal agreements to permit eligible providers to accept Individual Training Accounts provided in another state.

Removing Providers from the Eligible List

Upon receipt of performance information, the State shall remove programs from the State list that failed to meet the minimum performance levels. If the provider does not meet the required performance levels for all of its programs, it shall be removed from the list of “eligible providers.” In addition, there are a number of other enforcement reasons a provider may be removed from the list of “eligible providers” including:

- **Accuracy of Information:** If the designated state agency, after consultation with the local board involved, determines an eligible provider or individual supplying information on behalf of the provider intentionally supplies inaccurate information, the agency shall terminate the eligibility of the provider to receive funds described in Sec 122 subsection (a) for any program for a period of time, but not less than two years.
- **Noncompliance:** If the designated state agency, or the local board working with the state agency, determines an eligible provider described in Section 122 subsection (a) substantially violates any requirement under this Act, the agency, or the local board working with the state agency, may terminate the eligibility of such provider to receive funds or take such other action as the agency or local board determines to be appropriate. When it is necessary to terminate the eligibility of a provider, efforts shall be made to transition current students, as appropriate.

- **Repayment:** A provider whose eligibility is terminated because of Accuracy of Information or Noncompliance (described above) shall be liable for repayment of all funds received for the program during any period of noncompliance.
- **Construction:** This enforcement subsection and the appeal process shall be construed to provide remedies and penalties that supplement, but do not supplant, other civil and criminal remedies and penalties.

Appeal Process

There is an appeal process for providers denied eligibility to provide services, who are subsequently terminated from the State list of eligible training providers, or who are denied eligibility by a one-stop operator to provide on-the-job training or customized training. The training provider will:

- Submit a written request for a hearing within 30 days of denial notification to the state board. The state board will conduct a hearing within 30 days of receipt of the request for the hearing;
- The hearing shall include the reason(s) why the eligibility to provide training was terminated by the State, and an appeal by the training provider describing why the decision should be reversed or a compromise established;
- Within 10 days of the hearing, the state board will render a final judgment that will include the length of time, if any, the provider must remain ineligible to provide training services, and conditions that will justify re-establishing eligibility as a training provider;
- A decision under this State appeal process may not be appealed to the Secretary of Labor; and
- Any parties aggrieved by a final decision may file a petition for review in the district court of the county where the action is taken within 30 days after service of the final decision.